



House of Representatives

General Assembly

File No. 237

February Session, 2008

Substitute House Bill No. 5626

House of Representatives, March 27, 2008

The Committee on Labor and Public Employees reported through REP. RYAN, K. of the 139th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CLARIFYING THE HANDLING OF WORKERS' COMPENSATION CLAIMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (a) of section 31-284 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2008*):

4 (a) An employer who complies with the requirements of subsection
5 (b) of this section shall not be liable for any action for damages on
6 account of personal injury sustained by an employee arising out of and
7 in the course of his employment or on account of death resulting from
8 personal injury so sustained, but an employer shall secure
9 compensation for his employees as provided under this chapter, except
10 that compensation shall not be paid when the personal injury has been
11 caused by the wilful and serious misconduct of the injured employee
12 or by his intoxication. All rights and claims between an employer who
13 complies with the requirements of subsection (b) of this section and

14 employees, or any representatives or dependents of such employees,
15 arising out of personal injury or death sustained in the course of
16 employment are abolished other than rights and claims given by this
17 chapter, provided nothing in this section shall prohibit any employee
18 from securing, by agreement with his employer, additional
19 compensation from his employer for the injury or from enforcing any
20 agreement for additional compensation; and further provided, the
21 exclusivity of remedy provided by this section shall not apply to an
22 action against an insurer, third-party administrator or self-insured
23 employer for breach of the covenant of good faith and fair dealing in
24 the handling of claims under this chapter or for violation of chapter
25 704 or section 38a-815.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2008	31-284(a)
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LAB *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Dept. of Administrative Services - Workers' Comp. Claims	GF - Cost	Potential Significant	Potential Significant

Note: GF=General Fund

Municipal Impact:

Municipalities	Effect	FY 09 \$	FY 10 \$
Various Municipalities	Cost	Potential Significant	Potential Significant

Explanation

The bill permits civil actions against self-insured employers, insurers, and third-party administrators in certain situations.

Under this bill, the state and municipalities may be exposed to significant costs by claimants seeking damages through civil actions. Under current law, the workers' compensation system is the exclusive remedy for employees seeking compensation for work-related injuries.

OLR Bill Analysis**sHB 5626****AN ACT CLARIFYING THE HANDLING OF WORKERS' COMPENSATION CLAIMS.****SUMMARY:**

This bill permits civil actions against self-insured employers, insurers, and third-party administrators to address situations involving (1) breach of good faith and fair dealing in the handling of workers' compensation claims or (2) a violation of the unfair and prohibited practices chapter in insurance law. Under state law, the workers' compensation system is the exclusive remedy for employees seeking compensation for work-related injuries.

EFFECTIVE DATE: October 1, 2008

BACKGROUND***DeOliveira v. Liberty Mutual Ins. Co., 273 Conn. 487 (2005)***

In this decision, the Connecticut Supreme Court ruled that Connecticut law does not recognize a lawsuit filed against an insurer for bad faith handling of a workers' compensation claim because the state workers' compensation act bars such private action.

In this case, a compensation commissioner ruled in 1995 that the claimant's back injury was compensable under workers' compensation, but ruled against the claim for a psychological injury (depression) caused by the back injury and the insurer's handling of the claim.

In 2002 the claimant sued the insurance company seeking damages for a psychological injury stemming from the company's post-1995 delays and related actions. He argued that although workers'

compensation ruled his psychological injury was not compensable, the compensation commissioner found the insurer unduly delayed payment.

The insurance company, Liberty Mutual, argued that the exclusivity provision in workers' compensation law bars such private action. The existing remedies for misconduct, the company argued, means the legislature intended such issues to be resolved within workers' compensation.

The Supreme Court ruled in favor of the company noting that the exclusivity provision of the Workers' Compensation Act prohibits an employee from seeking redress outside of the workers' compensation system (CGS § 31-284). The Court ruled that the Workers' Compensation Commission's jurisdiction is not limited to acts of misconduct in the course of workers' compensation proceedings, but addresses remedies for misconduct in handling claims. It noted that to construe the act to permit torts for an injury for which it already provides a remedial process would "invite the indefinite prolonging of litigation and risk double recoveries and inconsistent findings of fact, a result which the legislature, in enacting such a system . . . in place of common law remedies, certainly wished to avoid" (*Robertson v. Travelers Ins. Co.*, 95 Ill. 2d 441, 451, 448 N.E. 2d 866 (1983)).

Unfair and Prohibited Insurance Practices

By law, the insurance commissioner may discipline and penalize insurers that he finds has committed an unfair practice. Prohibited practices include misrepresentation of policies, making false financial statements, and unfair claim settlement practices. Persons aggrieved by the commissioner's decision may appeal to Superior Court.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 1 (03/13/2008)